

Case Summary

Tommy Britt appeals his conviction for Class B felony arson. We affirm.

Issue

The sole issue is whether the evidence is sufficient to sustain Britt's conviction for the arson of Justin Baker's "dwelling."

Facts

At all times relevant to this case, George and Janet Leonard owned a trailer located at 805 North Lankford School Road in Taswell.¹ Prior to February 2009, the Leonards' son, Joe Leonard, lived at the trailer with Justin Baker, a family friend. When Joe and Baker were staying at the home together, they paid the utilities, but neither Joe nor Baker paid rent to the Leonards. Approximately two months prior to the fire at the trailer on April 15, 2009, Joe left for prison to serve a two-year sentence. Baker had an agreement with George Leonard to live at the trailer while Joe was in prison.

Baker testified at trial that the trailer was his home and principal address. He had personal belongings at the trailer, including clothing, a bed, couch, refrigerator, DVDs, CDs, personal pictures, a backpack, hunting bow, hunting accessories, and firearms. Baker also received mail at the trailer. Although his driver's license did not reflect the trailer's address, he testified that he originally did not plan on staying at the trailer for a long time but that changed when Joe went to prison. Baker was often absent from the

¹ The State and Britt agreed at trial that the trailer is technically located in the town of Taswell. However, Taswell does not have a post office, so the property has an English address according to the postal service.

home for up to thirty days at a time due to his employment on a tow boat. When Baker was away at his job, George paid the utilities, but Baker paid them when he returned home to the trailer. Baker never paid rent to the Leonards because that was his agreement with George. George explained at trial that he did not charge Baker rent because he was a family friend.

On April 15, 2009, Britt set fire to the trailer. Baker was gone on the day of the fire due to his employment, having left approximately two weeks prior. Assistant Fire Chief, Michael Benham, obtained written consent from the Leonards to enter the home and investigate the cause of the fire because Baker was at work. At some point, Baker was notified of the fire at the trailer, left work, and arrived at the trailer approximately twelve hours after the fire. Upon arrival, Baker approached the police officer on the scene, Shawn Scott, and stated that he was the one who lived there. Baker and Officer Scott entered the trailer, and Officer Scott testified that Baker appeared upset about the fire, particularly about the damage done to the photographs of his niece and nephew. Baker asked to remove some of his items from the home, which Officer Scott allowed. Officer Scott testified that, although Baker's driver's license did not reflect the trailer's address, he was not concerned because Baker knew exactly where his possessions were located in the trailer and could name the children in the photographs. Later that afternoon, Baker went to Chief Benham's office, who understood that Baker was the occupant of the trailer and returned items to him that were taken from the trailer.

On July 23, 2010, the State charged Britt with arson, a Class B felony, for allegedly damaging property of another worth \$5,000 or more. On the first day of trial,

this charge was amended to allege that Britt had burned the “dwelling of another person.” Ind.Code § 35-43-1-1(a)(1). At trial, Britt’s counsel requested that the “other person” be named, and the State named Baker. Following a jury trial, Britt was convicted of arson as a Class B felony. Britt now appeals.

Analysis

Britt argues that the evidence is insufficient to sustain his conviction for Class B felony arson. Specifically, he argues that the State failed to prove beyond a reasonable doubt that the trailer was the “dwelling” of Baker. He argues that the trailer was actually the dwelling of Joe prior to his incarceration and did not cease being his dwelling while he was incarcerated.

When reviewing the sufficiency of the evidence needed to support a criminal conviction, we neither reweigh evidence nor judge witness credibility. Bailey v. State, 907 N.E.2d 1003, 1005 (Ind. 2009). “We consider only the evidence supporting the judgment and any reasonable inferences that can be drawn from such evidence.” Id. We will affirm if there is substantial evidence of probative value such that a reasonable trier of fact could have concluded the defendant was guilty beyond a reasonable doubt. Id.

To find Britt guilty of Class B felony arson, the State had to prove that Britt (1) knowingly or intentionally; (2) by means of fire or explosive; (3) damaged; (4) the dwelling of another person; (5) without the other person’s consent. I.C. § 35-43-1-1(a)(1); Belser v. State, 727 N.E.2d 457, 464-65 (Ind. Ct. App. 2000), trans. denied. The State named the “other person” as Baker at trial. Therefore, the State concedes that it had to prove that the dwelling located at 805 Lankford was Baker’s “dwelling.”

The term “dwelling” is defined in Indiana Code Section 35-41-1-10 as “a building, structure, or other enclosed space, permanent or temporary, movable or fixed that is a person’s home or place of lodging.” Britt argues that the trailer is Joe’s dwelling and not Baker’s, as stated in the charging documents and as amended at trial. Therefore, the issue is whether there is sufficient evidence to prove that the trailer was Baker’s dwelling. Britt argues that the dwelling is not Baker’s because he was there only every other month, did not plan to stay there long, did not pay rent, did not change his driver’s license to reflect 805 Lankford as his address, and Joe’s personal belongings remained in the home. He also argues that it was not Baker’s dwelling because Baker acknowledged at trial that he would not have the right to stay there if the Leonards asked him to leave.

All of the cases cited by Britt address the issue of whether a structure can be characterized as a dwelling and not whether the dwelling is the dwelling of a specific person. This is so because the statute has traditionally held arson to be an “offense against habitation” and “provides for greater penalties the closer the offense comes to endangering another’s life or well-being.” Ferrell v. State, 565 N.E.2d 1070, 1072 (Ind. 1991). In expanding the definition of a “dwelling,” Indiana cases have provided us with factors to consider when determining whether a structure is “a person’s home or place of lodging.” I.C. § 35-41-1-10.

In Ferrell, the court held that a house was a dwelling even though the owner had not slept in the house for four months, but maintained his home address and telephone number there, picked up his mail there, and generally checked out the house on a regular basis. 565 N.E.2d at 1072. In another case, a home was a “dwelling” when the

occupants were moving out, but they still had the right to occupy the residence and had personal items and furniture in the house. Yawn v. State, 539 N.E.2d 473, 474 (Ind. 1989), overruled on other grounds by Wright v. State, 658 N.E.2d 563, 570 (Ind. 1995). Similarly, in a burglary case, a house was considered a “dwelling” where the occupants were in the process of moving with only one week left on their lease and did not sleep at the house the night of the burglary,² but had personal items in the house, maintained their address at that house, and still had the right to sleep at the residence. Byers v. State, 521 N.E.2d 318, 319 (Ind. 1988). We have also held that the owner’s absence from a home for four months due to her placement in a convalescent home did not make “her house any less a home, because when a house is left empty temporarily by its occupants it still remains a ‘home’ to which they will eventually return.” Watt v. State, 446 N.E.2d 644, 645 (Ind. Ct. App. 1983); Middleton v. State, 181 Ind. App. 232, 236, 391 N.E.2d 657, 661 (Ct. App. 1979) (holding that the character of a residence was not vitiated where the owner was temporarily absent from the residence while she was on a five-month vacation, intended to return, and did, in fact, return).

Indiana decisions have denied “dwelling” status when the occupant leaves with no intention to return and to certain vacant structures, such as “seasonally-inhabited retreats as opposed to a primary residence from which the owner is temporarily absent.” Watt, 446 N.E.2d at 646; Smart v. State, 244 Ind. 69, 73, 190 N.E.2d 650, 652 (1963) (holding that a summer cabin was not a dwelling within the first degree burglary statute when the

² Ind. Code § 35-41-1-10 defines dwelling for purposes of the arson statute and the burglary statute, Ind. Code § 35-43-2-1. See Ferrell v. State, 565 N.E.2d 1070, 1071 (Ind. 1991).

owners only used the cabin two to three weeks per year and some weekends); Carrier v. State, 227 Ind. 726, 733, 89 N.E.2d 74, 76-77 (1949) (holding that a summer fishing camp is not a dwelling for purposes of the burglary statute).

Here, Baker was temporarily absent from the home on the day of the fire and for two weeks prior to the fire because of his employment, which required him to be away for up to one month at a time. However, Baker's temporary absence from the trailer does not make it any less his home. Ferrell, 565 N.E.2d at 1072; Watt, 446 N.E.2d at 645; Middleton, 181 Ind. App. at 236, 391 N.E.2d at 661. In addition, Baker testified that the trailer was his dwelling and had made the trailer his home. George also testified that he considered the trailer to be Baker's home and that he could not rent it to anyone else due to his agreement with him. Baker kept personal items in the trailer, considered it his principal residence, received mail there, and had an agreement with the owner to live there and pay utilities.

There is also evidence that Baker intended to return to the trailer. In fact, Baker left work early once notified of the fire and was visibly upset upon arrival at the trailer. Baker identified himself to Officer Scott as the occupant of the home, retrieved what belongings were salvageable, knew exactly where his belongings were located, and could name with specificity the serial numbers of the firearms in the trailer that belonged to him.

Britt claims that the trailer was Joe's dwelling and not Baker's dwelling. However, this is merely a request to reweigh the evidence and judge the credibility of the witnesses, which we cannot do. Watt, 446 N.E.2d at 646. Besides, there is no support

for the contention that the trailer could not be both Joe and Baker's dwelling. See Byers, 521 N.E.2d at 319 (finding that a house was the dwelling of both a husband and wife at the time of the burglary); Yawn, 539 N.E.2d at 474 (finding that a house was the dwelling of both the lessee of the home and his fiancée at the time of the burglary). There was substantial evidence of probative value from which the trier of fact could have concluded that the trailer located at 805 North Lankford School Road was Baker's "dwelling" for purposes of the arson statute.

Conclusion

The evidence is sufficient to sustain Britt's conviction. We affirm.

Affirmed.

ROBB, C.J., and BRADFORD, J., concur.